IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1869 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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THE NEW INAIA ASSURANCE CO.LTD

Versus

PREMBAI SHIVJI BHUVA WD/O.LATESHIVJI BHIMJI BHUVA

Appearance:

MS LILU K BHAYA for Appellant

MR MEHUL S SHAH for Respondent No. 1-7

DELETED for Respondent No. 8-10

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.C.PATEL

Date of decision: 24/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Appeal admitted. Mr. Mehul S. Shah appears for the respondents-claimants and waives service of notice in the appeal.

2. On a joint request of learned counsel, this appeal is taken up for final hearing today. This is an appeal under section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company, challenging the judgement and award passed by the Motor Accident Claims Tribunal, Kutch at Bhuj, under section 163-A of the Motor Vehicles Act (as amended in 1994). The appellant insurer contends that the impugned award under section 163-A has been delivered by the Tribunal as an interim award by passing the same as an order below Exh.6 in the main claim petition viz. Motor Accident Claim Petition No.1/99. The main claim petition under section 166 of the said Act viz. Petition No.1/99 is admittedly pending.

3. The contention raised in this regard by the appellant is that an award under section 163-A cannot be regarded to be an interim award nor can it be regarded to be subject to adjustment against an award that may be passed in a petition filed under section 166 of the Act.

4. This is a contention which we are bound to accept in view of the decision of the Supreme Court in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai Kodala, reported in 2001(4) JT page 477.

5. In the premises aforesaid, in view of the clear position of law laid down by the Supreme Court, the impugned judgement and award is required to be quashed and set aside. We hold and direct accordingly. This appeal is, therefore, allowed with no order as to costs.

6. It is clarified on the request of learned counsel for the original claimants that the respondent-claimants are at liberty to pursue the main claim petition filed under section 166 of the ACt and to obtain a judgement thereon on merits and in accordance with law under section 168 of the Act.

7. The amount deposited in the Registry by the appellant herein may be withdrawn by the appellant, if not yet transmitted to the Tribunal.

8. By an interim order passed in Civil Application No.4586/2001, the respondents-original claimants were permitted to withdraw the amount deposited by the

appellant with the Tribunal, by way of a condition attached to the stay granted by this court in respect of the impugned award. If the amount deposited by the appellant has not been withdrawn by the original claimants, they shall not be permitted to withdraw the same by the Tribunal. If the amount has not been withdrawn by the original claimants, the same may be refunded to the appellant.

9. It is open to the respondents-claimants to apply to the Tribunal for expeditious hearing of the said claim petition.

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